

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION



In the Matter of)

Schering-Plough Corporation,)
a corporation,)

Upsher-Smith Laboratories,)
a corporation,)

and)

American Home Products Corporation,)
a corporation.)

Docket No. 9297

SCHEDULING ORDER

- | | | |
|--------------------|---|--|
| June 14, 2001 | - | Complaint Counsel provides preliminary witness list (not including experts) with description of proposed testimony. |
| June 28, 2001 | - | Respondents' Counsel provide preliminary witness lists (not including experts) with description of proposed testimony. |
| July 25, 2001 | - | Status conference to report on discovery and other pretrial matters, if requested by the parties. |
| July 19, 2001 | - | Complaint Counsel provides expert witness list. |
| August 15, 2001 | - | Complaint Counsel provides expert witness reports. |
| August 31, 2001 | - | Respondents' Counsel provides expert witness lists. |
| September 13, 2001 | - | File statement of the case reporting on compliance with discovery and settlement negotiations and identifying the legal and factual matters to be decided by the Administrative Law Judge. |

- September 20, 2001 - Exchange revised witness lists, including preliminary rebuttal witnesses, with description of proposed testimony.
- September 24, 2001 - Respondents' Counsel provide expert witness reports.
- September 25, 2001 - Deadline for filing motions for summary decision.
 - Deadline for issuing document requests, requests for admission, interrogatories and *subpoenas duces tecum*.
- September 26, 2001 - Status conference to report on discovery and other pretrial matters, if requested by the parties.
- October 11, 2001 - Complaint Counsel to identify rebuttal expert(s) and provide rebuttal expert report(s). Any such reports are to be limited to rebuttal of matters set forth in Respondents' expert reports. If material outside the scope of fair rebuttal is presented, Respondents will have the right to seek appropriate relief (such as striking Complaint Counsel's rebuttal expert reports or seeking leave to submit rebuttal expert reports on behalf of Respondents).
- October 18, 2001 - Deadline for filing responses to motions for summary decision.
- October 25, 2001 - Close of discovery, other than discovery permitted under Rule 3.24(a)(4) and depositions of experts.
- November 1, 2001 - Deadline for filing replies on motions for summary decision.
 - Deadline for depositions of experts (including rebuttal experts).
- November 6, 2001 - Exchange, and serve courtesy copy on ALJ, final proposed witness and exhibit lists, including designated testimony to be presented by deposition, and a brief summary of the testimony of each witness. The final proposed witness list may not include additional witnesses not listed in the preliminary or revised preliminary witness lists previously exchanged unless good cause is shown.
- November 7, 2001 - Status conference to report on discovery and settlement negotiations.
- November 9, 2001 - Exchange copies of exhibits (except for demonstrative, illustrative or summary exhibits).

- November 20, 2001 - Deadline for filing motions *in limine* and motions to strike.
- Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- Exchange, and serve courtesy copy on ALJ, objections and designations in response to any designated deposition testimony and objections to final exhibit lists.
- November 22, 2001 - Exchange proposed stipulations of law, facts, and authenticity.
- November 27, 2001 - Deadline for filing responses to motions *in limine* and motions to strike.
- Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
- November 29, 2001 - Exchange responses to proposed stipulations of law, facts, and authenticity.
- December 3, 2001 - File pretrial briefs identifying the legal matters, supported by legal authority, and factual matters to be decided by the Administrative Law Judge.
- Exchange demonstrative, illustrative or summary exhibits.
- December 5, 2001 - File final stipulations of law, facts, and authenticity. Any subsequent stipulations may be filed as agreed by the parties.
- December 6, 2001 - Final prehearing conference to be held at 10:00 a.m. in room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, N.W., Washington, D.C. The parties are to meet and confer prior to the conference regarding trial logistics and proposed stipulations of law, facts, and authenticity and any designated deposition testimony. All trial exhibits will be admitted or excluded.
- December 10, 2001 - Commencement of Hearing, to begin at 10:00 a.m. in room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, N.W., Washington, D.C.

ADDITIONAL PROVISIONS

1. Pursuant to Rule 3.21(c)(2), extensions or modifications to these deadlines will be made only upon a showing of good cause.

2. Compliance with the scheduled end of discovery requires that the parties serve subpoenas and discovery requests sufficiently in advance of the discovery cut-off, that all responses and objections will be due on or before that date, unless otherwise noted. Any motion to compel responses to discovery requests shall be filed within 5 days of impasse if the parties are negotiating in good faith and are not able to resolve their dispute.

3. Written discovery is limited in accordance with the FTC Procedures and Rules of Practice, which includes a provision that each party is limited to a total of 25 interrogatories. There is no limit to the number of sets of interrogatories the parties may issue, as long as the total number, including all subparts, does not exceed 25. Additional interrogatories will be permitted only for good cause upon application to and approval by the Administrative Law Judge. Responses or objections to document requests, interrogatories, and requests for admission shall be due within 20 days of service.

The parties shall serve all discovery requests on each other in both hard copy (paper) and electronic format (disk or e-mail). Each response and/or objection to each discovery request shall be preceded by the specific discovery request to which the answer pertains.

The deposition of any person may be recorded by videotape, provided that the deposing party notifies the deponent and all parties of its intention to record the deposition by videotape at least five days in advance of the deposition.

4. The preliminary and revised witness lists shall represent counsels' good faith designation of all potential witnesses who counsel reasonably expect may be called in their case-in-chief. Parties shall notify opposing parties promptly of changes in preliminary and revised witness lists to facilitate completion of discovery within the dates of the scheduling order. After the submission of the final witness lists, additional witnesses may be added to the final witness lists only by order of the Administrative Law Judge upon a showing of good cause.

5. The final exhibit lists shall represent counsels' good faith designations of all trial exhibits other than demonstrative, illustrative, or summary exhibits. Additional exhibits may be added after the submission of the final lists only by order of the Administrative Law Judge upon a showing of good cause.

6. The parties shall serve upon one another, at the time of issuance, copies of all subpoenas *duces tecum* and subpoenas *ad testificandum*. Counsel scheduling depositions shall immediately notify all other counsel that a deposition has been scheduled.

Third parties shall provide copies of subpoenaed documents to the party issuing the request or make subpoenaed documents available for inspection and copying. The requesting party shall provide copies of the subpoenaed documents to all other parties within five business days of receiving them.

7. At the time an expert is first listed as a witness by a party, the listing party will provide to the other parties:

- (a) materials fully describing or identifying the background and qualifications of the expert, lists of publications, and all prior cases in which the expert has testified or has been deposed; and
- (b) transcripts of such testimony in the possession, custody or control of the listing party or the expert.

At the time an expert report is produced, the listing party will provide to the other parties all documents and other written materials relied upon by the expert in formulating an opinion in this case.

Each expert report shall include the subject matter on which the expert is expected to testify and the substance of the facts and opinion to which the expert is expected to testify and a summary of the grounds of each opinion.

Service of all papers filed with the Commission shall be made on opposing counsel and two courtesy copies to the Administrative Law Judge by hand or by facsimile by 5:00 p.m. on the designated date. Unless requested, the parties shall not serve courtesy copies on the ALJ of any papers (including discovery requests and responses) that are not required to be filed with the Office of the Secretary.

Deliveries shall be as follows:

For Complaint Counsel:

Karen G. Bokat
FEDERAL TRADE COMMISSION
601 Pennsylvania Avenue, N.W. – Room 3115
Washington, D.C. 20580

For Schering-Plough Corp.:

Laura S. Shores
HOWREY SIMON ARNOLD & WHITE

1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

For Upsher-Smith Laboratories:

Robert D. Paul
WHITE & CASE, LLP
601 13th Street, N.W.
Suite 600 South
Washington, D.C. 20005

For American Home Products Corp.:

Cathy A. Hoffman
ARNOLD & PORTER
555 Twelfth Street, N.W.
Washington, D.C. 20004-1202

All deliveries by facsimile shall be followed promptly by delivery of an original by hand or by U.S. mail, first class postage prepaid. It shall be the obligation of the serving party to ensure that service by facsimile has been effected.

7. All pleadings that cite to unpublished opinions shall include such cases as exhibits.

8. The procedure for marking of exhibits referred to in the adjudicative proceeding shall be as follows: both sides shall number the first page of each exhibit with a single series of consecutive numbers. Complaint Counsel's exhibits shall bear the designation CX and Respondents' counsels' exhibits shall bear the designation RX or some other appropriate designation. (For example, the first exhibit shall be marked CX-1 for Complaint Counsel.) When an exhibit consists of more than one piece of paper, each page of the exhibit must bear a consecutive bates number or some other consecutive page number.

All exhibit numbers must be accounted for, even if a particular number is not actually used at trial. If a party selects certain, but not all, documents that it previously designated as deposition exhibits, the party must indicate that certain numbers were not used in the numbering process for designating trial exhibits. For example, if Complaint Counsel decided to not introduce at trial documents previously marked at depositions as exhibits CX-2, CX-4, and CX-6, Complaint Counsel's list of exhibits would begin CX-1, CX-3, and CX-5. This method of numbering exhibits for trial is acceptable, as long as the party also prepares a list of its exhibits indicating that CX-2, CX-4, and CX-6 were never designated as trial exhibits. Using this example, in preparing the set of original exhibits to give to the court reporter, Complaint Counsel

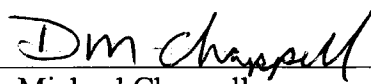
must indicate that CX-2, CX-4, and CX-6 were never designated as trial exhibits by inserting in their place a blank piece of paper or tab.

9. At the final pre-hearing conference, counsel will be required to introduce all exhibits they intend to introduce at trial. Counsel will further be required to give the originals of exhibits to the court reporter, which the court reporter will keep.

10. In addition to providing the original exhibits to the court reporter at the final pre-hearing conference, counsel must bring to the hearing one copy of their exhibits for each of the following: the court reporter, the Administrative Law Judge, the Administrative Law Judge's attorney advisor, and the witness. Counsel will present the copy to each of the above when using it, and then take back the copy when finished. Counsel may agree among themselves on the method by which they wish to exchange exhibits with each other.

11. There shall be no *ex parte* communications between any party and the Administrative Law Judge or his attorney advisor, unless such communications have been expressly consented to by all parties.

ORDERED:



D. Michael Chappell
Administrative Law Judge

Date: May 3, 2001